

LOG OF MEETING

U.S. CONSUMER PRODUCT SAFETY COMMISSION OFFICE OF COMMISSIONER THOMAS H. MOORE

CPSA CASE NO. 12/10/07
NOTED FOR CPSC
PRODUCT INFORMATION
EXCERPTED FOR
RULEMAKING ADMIN. PROC.
WITH PORTIONS REMOVED: _____

SUBJECT: Meeting on Cigarette lighter rulemaking

DATE OF MEETING: November 27, 2007

PLACE: Room 725, CPSC headquarters

LOG ENTRY SOURCE: Michael Gougisha

DATE OF ENTRY: November 28, 2007

COMMISSION ATTENDEES: Michael Gougisha - Counselor to Commissioner

NON-COMMISSION ATTENDEES: Walt Sanders - Vice President Law &
Government Affairs, Van Fleet Associates, Inc.

SUMMARY OF MEETING:

Mr. Sanders basically reiterated the points outlined in materials that he supplied which set forth reasons for the Commission to adopt the voluntary standard, ASTM F400-04, as a mandatory standard. Mr. Sanders also expressed support for Sec. 34, Completion of Cigarette Lighter Rulemaking, of Senate bill S. 2045 and expressed support for a similar provision to be included in House bill H.R. 4040.

Copies of materials provided by Mr. Sanders during the meeting are attached.

Agenda for Meeting with Commissioner Thomas Moore

Concern About ASTM-400

- When ASTM F400 was first established, until the early 1990's, there was widespread compliance with this safety standard. However, as imports of lighters from the Far East began to dominate the market in the mid to late 1990's, compliance with this voluntary standard decreased dramatically.
- Tests conducted by members of the American Lighter Association in the 2000 to 2004 time frame showed that nearly all lighters imported from China failed one or more of the test specifications established by the voluntary standard.
- The CPSC recently conducted its own testing as a part of the ongoing rulemaking and found that 77.5% of the lighters from China still failed one or more of the test specifications in the ASTM standard.
- Both Canada and Mexico established mandatory safety standards for lighters, based upon the ASTM F400 standard many years ago. In fact, the U.S. is the only NAFTA trading partner where you can sell non-compliant lighters. The European Union also recently adopted the international counterpart to ASTM F400, ISO 9994.
- The CPSC proposed rulemaking enjoys widespread support from the lighter industry. Moreover, safety and consumer groups support the rulemaking, including the National Association of State Fire Marshals, Safe Kids Worldwide, and the Consumer Federation of America.
- Zippo believes that there are a sufficient number of deaths and injuries associated with non-compliant or faulty lighters to take any action -- one or two deaths a year and nearly 1,000 injuries a year from faulty lighters.
- Either the CPSC should adopt the ASTM F400-04 standard as a mandatory standard, or Congress should do so legislatively.

CPSC Reform Legislation

- House bill more reasonable than Senate bill.
- We object to the right to sue by AGs.
- Support mandatory rulemaking on ANPR, but want shorter time period;

**TESTIMONY OF
CHARLES JEFFREY DUKE, GENERAL COUNSEL
ZIPPO MANUFACTURING COMPANY
Hearing on
CPSC REFORM ACT, S. 2045**

Before the

**U.S. SENATE COMMITTEE ON
COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON CONSUMER AFFAIRS,
INSURANCE AND AUTOMOTIVE SAFETY**

OCTOBER 4, 2007

Chairman Pryor, Ranking Member Sununu, and other distinguished Subcommittee Members. My name is Charles Jeffrey Duke, General Counsel of Zippo Manufacturing Corporation. I want to thank you for giving me the opportunity to submit my views on the Consumer Product Safety Reform Act, S. 2045.

In general, Zippo supports the reauthorization of the U.S. Consumer Product Safety Commission with substantially increased authorization and staff levels. I believe that S. 2045 embraces a healthy increase of both of these resources and I support those objectives. Zippo supports a number of the needed reforms in S. 2045; for example, providing the authority to expand the Commission to five Commissioners; streamlining the submission of documents and reports to Congress; streamlining rulemaking procedures; and providing a system for more accurate identification of manufacturers by importers, retailers and distributors.

Zippo also supports expanding the list of certain prohibited acts – such as prohibiting the resale of recalled products; increasing penalties for repeat offenders; and increased penalties for misrepresenting information in investigations; and more efficient sharing of information with Federal, State, local and foreign law enforcement agencies.

There are, however, other provisions in the bill that would impose unreasonable burdens on small and medium sized enterprises (SMEs) like Zippo. The elimination of section 6(b) of the Consumer Product Safety Act could expose Zippo and other SMEs to breaches of confidential and proprietary information. Zippo also is very concerned about Section 21 of the bill that would authorize lawsuits by state attorneys general. This has the potential of exposing Zippo and other SME's to expensive and unnecessary litigation in a myriad of legal systems. SMEs are much less able to expend resources on litigation than multinationals are. Every dollar spent on litigation comes at the expense of spending to protect intellectual property, developing and innovative products and continuing to employ Americans in good paying jobs with comprehensive employee benefits.

Zippo is also concerned about Section 18 of the bill that would have the effect of narrowing Federal preemption. This tends to create confusion in the marketplace due to the absence of a clear national standard. In this era of globalization, when SMEs are being required to compete in dozens if not hundreds of countries, as Zippo does, just to survive, a clear National safety standard enforced Federally, as compared to numerous state variations created by state enforcement, to provide the consistency both manufacturers and consumers need. Zippo would like to work with the committee to improve this legislation making the provisions more fair and equitable for consumers and SMEs alike.

I would like to point to one specific provision of the bill -- section 25 -- that establishes a model for helping Zippo and other lighter companies, along with many other industries, to make a substantial contribution to safety. Section 25 requires the Commission to issue a final rule by no later than June 1, 2008 on a proposed rule on "Ignition of Upholstered Furniture by Small Open Flame and/or Smoldering Cigarettes" This proposed rule has been pending before the Commission for over 10 years without a successful outcome. It is time for the Commission to act on this proposed rule and the Congress is justified in encouraging the Commission to ensure action.

Zippo urges the Committee to adopt language similar to Section 25 to create a mandatory rule for the existing voluntary standard for cigarette lighters, ASTM F-400. For years, the Commission has been considering a pending rulemaking (Federal Register/Vol. 70, No. 68/Monday, April 11, 2005/Proposed Rules) to create a mandatory safety standard for cigarette lighters, yet it appears that the Commission is not prepared to act on this rulemaking, which is stuck at the ANPR stage. In the interim, one to two persons die each year due to faulty lighters entering the U.S. market.

The history of this rulemaking is revealing of the Commission's inability to take action. In November 2001, the Lighter Association, Inc. petitioned the Commission to adopt a voluntary standard -- ASTM F-400 -- as a mandatory standard under the Consumer Product Safety Act (CPSA). This voluntary standard meets the requirements to address the risk of death, and injury associated with the mechanical malfunction of lighters. Zippo believes that a mandatory rule is necessary to address an unreasonable risk of injury created by the widespread non-conformance of the voluntary standard by imported lighters.

Nearly three years ago on November 30, 2004 the Commission voted to grant the petition and published an advanced notice of proposed rulemaking (ANPR) in the *Federal Register* on April 11, 2005. According to the CPSC staff, available market data indicates that imported and domestic lighter production totals approximately 1 billion units annually. Imports account for more than 75 percent of the U.S. market for lighters. China accounts for 58 percent of lighter imports- or 435 million lighters imported into our country every year. Chinese compliance with the voluntary standard on tests conducted by the CPSC is less than 30% thus assuming these samples are indicative of the market, at least 304 million of all lighters imported into the United States from China annually are not in compliance with the voluntary lighter standards with which American manufacturers comply. A voluntary standard loses its value to the consuming public if millions of products are potentially non-conforming.

According to the National Fire Incident Reporting System (NFIRS) for the period 1999 - 2002, there were an estimated 290 residential structure fires that appear to have been caused by malfunctioning lighters. According to CPSC data from the National Electronic Injury Surveillance System (NEISS) from 1997 - 2005, there were an estimated 4,145 emergency department treated injuries resulting from malfunctioning lighters; mostly burns to the face, hands, and fingers. From 1997 - 2005, 362 incident reports related to lighter failures were received; 65 percent of these lighter failures resulted in fires, leading to 4 deaths and some serious injuries. The information in these reports showed that malfunctioning lighters mostly resulted in fire and explosion hazards. This updated incident data includes four deaths and additional serious injuries

In testimony before the Commission on September 14, 2004, Rohit Khanna, the Project Leader for the lighter rulemaking, testified that there were an estimated 2.2 deaths per billion lighters sold from malfunctioning lighters and an estimated 1.1 injuries per million lighters sold from malfunctioning lighters. With the billion lighters sold each year, this equates to about 2 deaths each year and about 1000 injuries each year.

Once the ANPR was voted out, the CPSC staff conducted a study to estimate the level of conformance of lighters to ASTM F-400 and revealed that inexpensive and disposable lighters had conformance rates at or below 40 percent (approximately 91 percent of all lighters in the market are disposable and 9 percent are refillable). Among countries, lighters from China had the lowest conformance rate at less than 30 percent. This is consistent with testing conducted by BIC Corporation in 2002 which revealed a conformance rate of less than 10 % for disposable lighters from China and testing conducted by the Lighter Association in 2004 which revealed a conformance rate of less than 20% for disposable lighters from China. Zippo's conformance with the ASTM F400 voluntary standard is 100%.

It is clear from this data that China and other countries that export disposable lighters to the United States are simply ignoring ASTM-F 400. One of the problems is the fact that an industry standard is voluntary and the Chinese have stated that if it is voluntary, they do not think they have to comply with it. A mandatory standard would provide the Commission staff with the tools to enforce the provisions of the standard and compel a high rate of conformance.

There are at least three reasons for a mandatory standard:

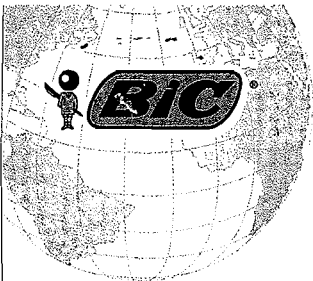
- A mandatory standard would reduce fires, injuries and death;
- If we want consistently high consumer safety standards it seems reasonable to require importers to adhere to the same high standards American producers already adhere to, particularly when they have an extraordinarily large share of the market and their products are more or less indiscernible to the consumer from lighters produced by American companies; and
- The EU and Canada have both adopted F-400 (ISO 9994) as a mandatory standard. If the Commission does not adopt F-400, the U.S. will become a dumping ground for lighters that cannot be imported into the EU or Canada.

Adoption of this standard as mandatory by the Commission would enhance consumer safety and greatly decrease the possibility of exposure to unsafe imported lighters. Zippo urges the Committee to adopt the Consumer Product Safety Reform Act, S. 2045, with appropriate amendments.

I thank the Committee again for considering my views.

Charles Jeffrey Duke

Zippo Manufacturing Co.



October 23, 2007

The Honorable Bill Nelson
United States Senate
SH-716
Washington, DC 20510

Re: S. 2045, CPSC Reform Act

Dear Senator Nelson:

BIC is the world's leading manufacturer of ballpoint pens and is a leader in all three of our markets: stationery products, lighters and shavers. Each day consumers around the world buy 5 million BIC® lighters. BIC is the sold remaining manufacturer of disposable lighters in the United States.

BIC Graphic USA (www.bicgraphic.com) is a leading supplier of custom-imprinted products for the promotional products industry. More than 700 employees work at BIC Graphic's administrative and production facilities in Clearwater and St. Petersburg, Florida.

As you know, Senator Pryor and Senator Inouye have introduced legislation in the Senate to reform or reauthorize the Consumer Product Safety Commission ("CPSC"). I felt this was an opportune time to bring to your attention a product safety issue that has been pending before the CPSC for six years.

In November 2001, the U.S. Lighter Association, of which BIC is a founding member, filed a Petition for Rulemaking with the CPSC requesting that stricter safety standards for lighters be established. I served as President of the Lighter Association for many years and am very familiar with this issue. Since 1975, when the first voluntary standard setting general safety standards for lighters was issued (ASTM F400), U.S. manufacturers and importers of lighters have adhered strictly to this safety standard. This standard imposes basic and obvious safety requirements such as requiring that lighters do not leak, do not have abnormally high flames, do not flare up, extinguish properly, etc.

As imports of lighters from the Far East began to dominate the market in the mid to late 1990's, compliance with this voluntary standard decreased dramatically. Tests conducted by BIC and the Lighter Association showed that nearly all lighters imported from China failed one or more of the test specifications. The CPSC recently conducted its own testing as a part of the ongoing rulemaking and found that 77.5% of the lighters from China still failed one or more of the test specifications in the ASTM standard.

The Honorable Bill Nelson
October 23, 2007
Page 2

BIC imports utility lighters from China. However, we make sure that all of our products, from wherever they are sourced, meet U.S. mandatory and voluntary safety standards. We believe that all lighter manufacturers should fully comply with these basic safety standards.

The rulemaking is apparently still at the ANPR stage. What makes this situation even more disconcerting is that both Canada and Mexico established mandatory safety standards for lighters, based upon the ASTM F400 standard, many years ago. The European Union also recently adopted a similar mandatory safety standard (ISO 9994).

The rulemaking enjoys widespread support from the lighter industry, the National Association of State Fire Marshals, Safe Kids Worldwide, and the Consumer Federation of America.

Based upon my face-to-face meetings with representatives of the CPSC, it is my clear impression that the CPSC does not believe that there are enough deaths and injuries associated with non-compliant or faulty lighters to take any action. It is hard for me to understand how one or two deaths a year and nearly 1,000 injuries a year from faulty lighters can be ignored. I firmly believe that either the CPSC should adopt the ASTM F400-04 standard as a mandatory standard, or Congress should do so legislatively.

BIC and the Lighter Association have a long-standing and excellent working relationship with the CPSC. However, on this issue, we simply do not understand why the Commission continues to allow unsafe lighters to be sold in the U.S. market. Any assistance that you could provide on this issue would be greatly appreciated.

Very truly yours,

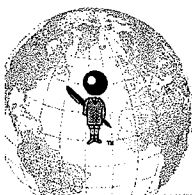
BIC CORPORATION



Thomas M. Kelleher
Sr. Vice President – Administration,
General Counsel and Secretary

/haf

Enclosure



BEACON POWER, INC.

5690 Bandini Boulevard ♦ Bell, California 90201

(323) 261-7293

FAX (323) 261-9562

www.beaconpower.biz

mikef@beaconpower.biz

Michael G. Forys
President and Chief Executive Officer

October 22, 2007

The Honorable Barbara Boxer
United States Senate
SH-112
Washington, DC 20510

Re: S. 2045, CPSC Reform Act

Dear Senator Boxer:

I recently learned that Senator Pryor and Senator Inouye had introduced legislation in the Senate to reform or reauthorize the Consumer Product Safety Commission ("CPSC"). In that regard, I wanted to bring to your attention a product safety issue that has been lingering before the CPSC for six years.

In November 2001, the U.S. Lighter Association, of which Beacon Power is a member, filed a Petition for Rulemaking with the CPSC requesting that stricter safety standards for lighters be established. I served as President of the Lighter Association for several years in the 1990's and am very familiar with this issue. Since 1975, when the first voluntary standard setting general safety standards for lighters was issued (ASTM F400), U.S. manufacturers and importers of lighters have adhered strictly to this safety standard. This standard imposes basic and obvious safety requirements such as requiring that lighters do not leak, do not have abnormally high flames, do not flare up, extinguish properly, etc. For your convenience, I am attaching a copy of the ASTM standard purchased by the Lighter Association's legal counsel. For your convenience, I would refer you to page 2 of ASTM F400-04, which sets forth in table format all of the test specifications.

When ASTM F400 was first established, and until the early 1990's, there was widespread compliance with this safety standard. However, as imports of lighters from the Far East began to dominate the market in the mid to late 1990's, compliance with this voluntary standard decreased dramatically. Tests conducted by BIC and the Lighter Association in the 2000 to 2004 time frame showed that nearly all lighters imported from China failed one or more of the test specifications set forth in the table referenced above. The CPSC recently conducted its own testing as a part of the ongoing rulemaking and found that 77.5% of the lighters from China still failed one or more of the test specifications in the ASTM standard. Copies of all three testing regimes are readily available from the CPSC or the Lighter Association.

My company sources lighters from China, and we have no bone to pick with imported products. However, we make sure that all of our products, from wherever they are

sourced, meet U.S. mandatory and voluntary safety standards. We believe that there should be no margin for error in this regard.

Despite my company's commitment to safety, and the Lighter Association's six-year effort to get the CPSC to issue a safety standard for lighters, the rulemaking is apparently still at the ANPR stage. What makes this situation even more difficult, if not ridiculous, is that both Canada and Mexico established mandatory safety standards for lighters, based upon the ASTM F400 standard, many years ago. The U.S. is the only NAFTA trading partner where you can sell non-compliant lighters. The European Union also recently adopted the international counterpart to ASTM F400, ISO 9994.

The rulemaking enjoys widespread support from industry, the National Association of State Fire Marshals (comments in support of ANPR and testified in support at hearing), Safe Kids Worldwide (comments in support of Petition), Consumer Federation of America (comments in support of ANPR) and former CPSC Compliance Officer for Lighters, Michael Bogumill (comments in support of petition).

Based upon information provided by the Lighter Association, it is my understanding that the CPSC does not believe that there are enough deaths and injuries associated with non-compliant or faulty lighters to take any action. It is hard for me as a U.S. businessman and taxpayer to understand why one or two deaths a year and nearly 1,000 injuries a year from faulty lighters should be ignored. In my judgment, this should be an easy problem to resolve. Either the CPSC should adopt the ASTM F400-04 standard as a mandatory standard, or Congress should do so legislatively.

My company and my trade association have an excellent working relationship with the CPSC. However, on this issue, we just do not understand why the agency continues to allow unsafe lighters to be sold in the U.S. market. Any help that you could provide to our company on this issue would be greatly appreciated.

Very truly yours,

Enclosure

April 1, 2002



1301 Pennsylvania Ave. N.W.
Suite 1000
Washington, D.C. 20004-1707
(202) 662-0800
(202) 393-2072 Fax
www.safekids.org

Chairman
C. Everett Koop, M.D.

President
Martin R. Eichenberger, M.D.

Executive Director
Heather Paul, Ph.D.

Todd Stevenson
Secretary
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20207

RE: Petition CP 02-1, Proposed Consumer Product Safety Standard for Lighters

Dear Mr. Stevenson:

On behalf of the National SAFE KIDS Campaign, I am writing in regard to a request for comments, published in the January 17, 2002 issue of the *Federal Register*, for petition CP 02-1 that proposes a consumer product safety standard for cigarette lighters. As child-play fire are the leading cause of residential fire-related death and injury among children ages 9 and under – and more than three-fourths of those fires were started by children playing with matches and lighters – the National SAFE KIDS Campaign is in full support of the U.S. Consumer Product Safety Commission (CPSC) adopting the ASTM voluntary standard for lighters as a government mandated safety performance standard.

Due to the unreasonable risks of injury created by many manufacturers' failure to comply with the existing ASTM voluntary standard, SAFE KIDS believes that the CPSC must act on the Lighter Association's petition. While SAFE KIDS commends the CPSC for its work to establish the child-resistant lighter standard, there is currently no overall regulation for the general product safety of disposable lighters. Since the child-resistant lighter standard has been in effect, the number of child-play lighter fires has declined 42 percent, and the number of deaths and injuries associated with these fires has declined 31 percent and 26 percent, respectively. Adoption of the ASTM standard will complement the child-resistant lighter standard as well as protect more children from the potential danger of lighters. In addition, as a growing number of children engage in fire-play activities, it is imperative that cigarette lighters be manufactured as safely as possible.

Furthermore, we have seen the notable proliferation of candles on the marketplace in recent years as well as their increase in use by teenage children. The rise in popularity of candles also raises the probability that lighters will also be present in the home – potentially heightening the risk of injury from these products to children and other family members. As fire and burns are the fifth leading cause of unintentional injury-related death among children ages 14 and under, we believe that a general performance standard for lighters will help prevent these incidents from occurring in the first place.

I am available to answer any questions that the U.S. Consumer Product Safety Commission may have relating to our position. As always, the Campaign looks forward to working with the U.S. Consumer Product Safety Commission on this and other issues in the future.

Sincerely,

Heather Paul, Ph.D.
Executive Director



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Johnson & Johnson



Consumer Federation of America

To: Office of the Secretary, U.S. Consumer Product Safety Commission
From: Rachel Weintraub, Director of Product Safety, Consumer Federation of America
Re: ANPR for Cigarette Lighters
Date: June 9, 2005

Please accept this letter as Consumer Federation of America's comment in response to CPSC's request for information and comments concerning the Advanced Notice of Proposed Rulemaking (ANPR) for cigarette lighters.

Consumer Federation of America recommends that CPSC vote in favor of the ANPR and move forward with the rulemaking process. Protecting consumers from death and injury caused by hazardous cigarette lighters is an important public health priority. We believe that it is in the best interest of consumers for all cigarette lighters sold in the United States to meet the safety standards set forth in ASTM F400-00. This standard includes critical requirements for maximum flame height, proper flame extinction, structural integrity, internal pressure and fuel levels.

We believe that moving forward with this rulemaking is the best way for the Commission to determine the most effective method for ensuring that all cigarette lighters comply with the voluntary safety standard. The Commission can ensure compliance either through codification of the voluntary standard or through a section 15 action. CPSC should move forward with the ANPR to determine the most effective method of compliance.



NATIONAL ASSOCIATION OF STATE FIRE MARSHALS

December 19, 2006

The Honorable Nancy Nord
The Honorable Thomas Moore
US Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

re: ANPR for Cigarette Lighters

Dear Acting Chairman Nord and Commissioner Moore:

I am writing on behalf of the National Association of State Fire Marshals (NASFM) to address the US Consumer Product Safety Commission (CPSC) rulemaking to adopt the voluntary "Standard Consumer Safety Specification for Lighters" (ASTM F-400) as a mandatory standard under the Consumer Product Safety Act (CPSA). NASFM appeared before the CPSC at a public meeting in September 2004 advocating that ASTM F-400 be adopted as a mandatory standard.

NASFM appreciates the excellent work by the CPSC staff during the Advance Notice of Proposed Rulemaking (ANPR) stage, as most recently evidenced by the status report released in October 2006. It seems clear based on this work that the ASTM F-400 standard is more than adequate to address the hazards identified by the CPSC and thus to reduce the risk of injury when lighters conform to its requirements. However, it also seems apparent that the overall level of conformance with the voluntary standard – at less than 60 percent, based on the conformance study conducted by the staff – is not nearly adequate to claim "substantial compliance" with the voluntary standard. Since ASTM F-400 was published in 1975, it seems unlikely that the level of conformance for products sold in the US will improve as long as the standard remains voluntary. In NASFM's view, the lack of compliance with the voluntary standard makes it necessary to regulate it as a mandatory standard.

NASFM believes that the CPSC now has all of the information it needs to take the next step on this rulemaking, and waiting additional time will only result in more fires and explosions, and associated casualties, involving noncomplying products. Therefore, NASFM encourages the CPSC to move forward with all speed in issuing a Notice of Proposed Rulemaking to adopt ASTM F-400 as a mandatory standard. It is hard for us to imagine that allowing more time to pass will result in substantially different information than is currently available to the Commission.